

DFEH News Brief

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CALIFORNIA ORDERS AIR CANADA TO PAY FOR REFUSING TO ACCOMMODATE CUSTOMER SERVICE AGENT'S DISABILITY

ELK GROVE, CA -- The California Department of Fair Employment and Housing (DFEH) announced today that Air Canada must pay more than \$325,000 in damages after the company fired one of its customer service representatives because of her disability. The Fair Employment and Housing Commission (Commission) found that Air Canada failed to accommodate the employee's disability and then fired her because she could not lift cargo – a job function customer service representatives rarely perform.

"Employers must attempt to find reasonable modifications that allow employees with disabilities to keep working," said the Department of Fair Employment and Housing Director Phyllis Cheng. "Using non-essential job functions as a pretext to deny employment to persons with disabilities is unlawful in California."

The employee, Caroline Messih Zemaitis, worked as a customer service agent for Air Canada at Los Angeles International Airport from 1993 to 2007. Starting in 2004, she held a clerical position in the cargo division that did not involve physical labor. In 2005 and 2006, Ms. Zemaitis injured her back, shoulder, knee and wrist, and her doctor restricted her from performing such tasks as heavy lifting and repeated bending. She was able to keep working in the cargo division with minor accommodations such as Air Canada's provision of a telephone headset and heating pad, and time off for physical therapy.

When Ms. Zemaitis became pregnant, her back condition worsened and she took a medical leave of absence for about a year. She tried to return to work in 2007 when her doctor released her with restrictions similar to those she had before, but Air Canada refused to respond to her many communications. Instead, Air Canada terminated Ms. Zemaitis's because she could not lift cargo, a job function the airline's customer service agents rarely perform.

The Commission found during this precedential decision that Air Canada had violated the Fair Employment and Housing Act. It ordered them to pay Ms. Zemaitis \$102,737 in back pay, \$19,720 in lost benefits, and \$125,000 for emotional distress. Air Canada must further reinstate and pay Ms. Zemaitis \$54,784 in wages plus interest and pay the State a \$25,000 administrative fine. The airline will also have to post a notice about their liability and develop a policy and train management on reasonable accommodations necessary to allow disabled employees to continue working.

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The mission of the DFEH is to protect Californians from unlawful discrimination in employment, housing and public accommodations and from hate violence. For more information about the DFEH and the laws it enforces, visit the Department's website at www.dfeh.ca.gov.